



## Criminal Liabilities of Children & Juvenile Justice in India

**Dr. Sanyogita Thakur**

Assistant Professor, Himachal Pradesh University, Institute of Legal Studies, Shimla, H.P

### KEYWORDS :

#### INTRODUCTION

Child is the most important asset of any nation. They are the crucial element for the prosperity of a nation. They are most vulnerable group in any society or state. Nowadays children are committing more and more crimes in the prevailing cultural and social milieu.

Crime committed by juvenile has increased in the last decade. The highest percentage of crime reported by juvenile was reported under assault on women to outrage her modesty 132.3% then after insult to the modesty of women 70.5% and rape 60.3%. In the year apprehended juvenile under IPC was 66.3% in the age group of 16-18 years. Out of the total juveniles (43,506) involved in various crimes, 8,392 were illiterate and 13,984 had education up to primary level. These two categories together accounted for 51.9% of the total juveniles arrested during the year 2013. A large number of juvenile 50.2% belonged to the poor families whose annual income was up to 25000 rupees.<sup>2</sup> After Delhi gang rape case the juvenile whose participation in this case was reportedly most brutal and gruesome was held guilty by juvenile justice board and awarded punishment for three years and sending to special home. After this voices of the public at large to reduce the age of juvenile was 18 to 16 years and demanded the capital punishment for juvenile who participated in the gang rape case. Millions were infuriated and demanded for a stricter punishment for the juvenile for the heinous crime committed by him i.e. rape of a women inflicting injurious which ultimately led to her death.<sup>3</sup>

#### JUVENILE DELINQUENT

The minimum age of criminal responsibility (MACR) is the age below which a person is completely immune from any criminal liability due to lack of maturity and judgment to understand the consequences of one's actions. Next comes the age below which a person is considered vulnerable and immature and hence cannot be made fully responsible for ones actions. This is the period of childhood and adolescence and crime committed during this stage is dealt with by most nations under special laws known as juvenile justice law

The Idea of different stages of age in Old Testament can be found as follows:

##### 1. Sensor motor Stage (Birth to 2 Years)

The child is in physical contact with objects around him and is active-ly discovering their operations.

##### 2. Preoperational Stage (2 years' to7 years)

Knowledge advances from simple actions to the use of representations such as images, language, and symbols.

##### 3. Concrete operations (7 Years to 11 Years)

Children develop logical thinking and concepts. Many aspects of a situation, rather than just one, may be taken into account when drawing conclusion.

##### 4. Formal Operations (After 11 Years)

Children become able to form abstract and hypothetical thought which is not bound to physical reality.

The Hebrew code opposed this view and asserted personal liability should be imposed on children<sup>4</sup>

Juvenile delinquents are those offenders including boys and girls who are usually under 18 years of age. A juvenile delinquent is a young

person consistent, or habitually defiant.<sup>5</sup> Delinquency is a kind of deviation. When an individual deviates from the course of usual social life, his behavior is called "delinquency". When a juvenile, below an age specified under a statute exhibits behavior which may prove to be hazardous to society and to him he may be called a 'Juvenile delinquent'.

#### GLIMPSE OF JUVENILE LAW IN OTHER COUNTRIES:

In **U.S.A** age to determine juvenility varies from state to state, in most of the states it is 18 years but in few it is 17 years and 16 years respectively. Many states permit execution of juvenile of 16 years for murder as an adult and could be tried by criminal courts for prosecution and punishment as adults as per the gravity of the alleged offence. Till now many juvenile offenders have been executed under capital punishment but in 2005 Supreme Court of U.S.A in the case of **Roper v. Simmons**<sup>6</sup>, held that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18.

In **U.K** child between 10 to 18 years becomes criminally responsible for his action and be tried by the Youth Court and could be tried in an adult court as per the gravity of the offence committed.

In **France** no criminal charge can be brought against a child up to the age of ten years; and for child between ten to thirteen years of age, only educational penalties such as placing in a specialized Centre or home are to be given, while between thirteen to sixteen years of age, minors will get only half of the adult sentence. Lastly, between sixteen to eighteen years of age, person would be remanded to Criminal Court and plea of juvenility can be set aside.

The basic rule which is followed by the legislatures of the most of the countries is that the plea of juvenility would be set aside and he would be tried in a criminal court if the crime committed by the minor is a heinous one such as murder, rape etc.

There is a great deal of scientific evidence to establish that adolescence is a period in

which the brain is continuously evolving and changing.<sup>7</sup> Belgium social statistician Adolphe Quetelet about two centuries ago observed that adolescents' particularly young males are prone to crime, disorder and delinquency because of their childish impulsiveness or adolescent conflict. To quote him " the propensity to crime is its maximum at the age when strength and passions have reached their height, yet when reason has not acquired sufficient control to master their combined influence"<sup>8</sup>

The main goals to drive the nation's juvenile justice system is protecting both public safety and the welfare and rehabilitation of young offender who break the law. State juvenile justice policies require balancing these interests while also preserving the rights of juveniles.<sup>9</sup>

#### LAWS AND STATUTES IN INDIA REGARDING JUVENILE DELINQUENCY

The Apprentices Act, 1850 was the first legislation dealing with children in conflict with law, providing for binding the children under the age of 15 years found to have committed petty offences as apprentices. Consequently, the Reformatory Schools Act, 1897 provided that children up to the age of 15 years sentenced to imprisonment may be sent to reformatory cell. Juvenile Justice Act, 1986 was enacted by the

parliament in order to provide care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles as a uniform system of juvenile justice mechanism throughout our country. Under the Act of 1986, Section 2(a) defined the term juvenile as a “boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years” but later on the parliament enacted Juvenile Justice Act, 2000 (herein after ‘JJ Act’) and the age bar was raised to 18 years for both girl and boy.

The Juvenile Justice Act, 2000 lays down that juvenile in clash with law may be kept in an observation home while children in need of care and protection need to be kept in a children home during the pendency of proceedings before the competent authority. This provision is in contradistinction with the earlier Acts which provided for keeping all children in an observation home during the pendency of their proceedings, presuming children to be innocent till proved guilty. The maximum detention could be imposed on a juvenile is for 3 years remand to Special Home irrespective of the gravity of offence committed by him and JJ Act, 2000 immunises the child who is less than 18 Years of age at the time of the commission of the alleged offence and from trial through Criminal Court or any punishment under Criminal Law in view of Section 17 of the Juvenile Act. The Juvenile Justice Act, 2000 is the primary law for children in need of care and protection.

#### **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000**

The Juvenile Justice Act, 1986 has been replaced<sup>10</sup> by a new Act called “The Juvenile Justice (Care and Protection of Children) Act, 2000”. This new law is more child-friendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. A clear distinction has been made in the new law between the juvenile offender and the neglected child. The other salient features of this enactment are: (i) it prescribes a uniform age of 18 years below which both boys and girls are to be treated as children (ii) the Act directs that the cases related to juveniles should be completed within a period of four months (iii) it has been made compulsory to set up a Juvenile Justice Board (previously known as Juvenile Court) and Child Welfare Committee (previously known as Juvenile Welfare Board) either for a District or a group of Districts. (iv) special emphasis has been given for rehabilitation and social re-integration of the children and the alternatives provided for this are adoption, foster care, sponsorship and after-care. The new Act allows for adoption of a child within the purview of this Act by any community. The Juvenile Justice Board has been empowered to give such children in adoption even to a single parent and to parents to adopt a child. The Juvenile Justice Rules, 2002 under the 2000 Act have already been framed by the Government. It states that 28 Juvenile Justice board and 30 Child Welfare committees in respect of all the 30 districts will be constituted. The programmes for Juvenile Justice endeavors to provide for full coverage of services envisaged under the Juvenile Justice Act so as to ensure that no child under any situation is lodged in prison; to bring about qualitative improvement in the juvenile justice services and to promote voluntary action for the prevention of juvenile social maladjustment.

There was never any doubt that the progressive juvenile law enacted in 2000 was not being implemented properly and that there was a need to revisit its provisions. In many ways, the Juvenile Justice (Care and Protection of Children) Bill, 2015, passed by the Lok Sabha, is a forward-looking and comprehensive enactment that provides for dealing with children in conflict with the law and those requiring care and protection. However, its laudable features have been overshadowed by one provision that states that children in the 16-18 age group will henceforth be tried as adults if they are accused of committing ‘heinous offences’. The government believes that the provision will help address public disquiet over the perception that young offenders are getting away with light punishment after committing crimes such as murder and rape. However, child welfare activists have been saying there is no need to carve out an exception for children in a particular age group solely based on the perceived heinousness of the offence. The division into two groups — one below 16 and another above 16 — goes against the core principle that all children should be treated as such till the age of 18. This age has been fixed based on studies in child behaviour and the U.N. Convention of the Rights of

the Child. A parliamentary Standing Committee opposed the change, noting that subjecting juveniles to the adult judicial system would go against the objective of protecting all children from the rigours of adult justice. It noted that the Supreme Court had not agreed with the view that children involved in certain offences should be tried as adults.

In response to criticism, the government has made some changes before getting the Act passed in the Lok Sabha. It has dropped a patently unconstitutional section (Clause 7 in the Bill) that sought to treat as adults, children allegedly committing an offence after the age of 16 but getting arrested only after they are 21. Also, the government has tweaked the wording involved, saying that what the Juvenile Justice Board will hold is a “preliminary assessment” rather than a “preliminary enquiry” into the mental and physical capacity of the child to commit such an offence. It has added by way of explanation that it is not a ‘trial’, obviously to address concerns that the procedure to assess the child’s capacity itself may amount to a regular trial.

#### **THE JUVENILE JUSTICE ACT, 2015**

The juvenile Act, 2015 or The Juvenile Justice (care and protection of children) Act, 2015 was passed by the parliament of India. This act was passed by Lok Sabha on 7th May 2015 and passed by Rajya Sabha on 22th December, 2015 and finally came into force from 15th January, 2016. The aim to amend the Juvenile Justice Act, 2000 into Juvenile Justice Act, 2015 is to replace the existing Indian Juvenile Delinquency Law, Juvenile Justice (care and protection of children) Act, 2000 so that juveniles in conflict with law in the age group of 16-18, involved in Heinous offences, can be tried as adults.

The reason because of which the judiciary finds a need to amend the law was the decision of 2012, Delhi Gang Rape case, probably known as **Nirbhaya Case**. After 2012 Delhi gang rape case, the accused in the case was a few months away from being 18 hence tried in the juvenile court. On July 2013, Sh. Subramanian swami, a politician filed a Public interest litigation in the supreme court of India seeking that the boy be tried as an adult in a court. Thereafter court asked the juvenile court to delay its verdict. After the supreme court allowed the juvenile court to give its verdict, the boy was sentenced to 3 years in a reform home on 31 August, 2013. The victim’s mother criticized the verdict of the court and said by not punishing the juvenile the court was encouraging other teenagers to commit similar crimes. Because of this dissatisfaction towards the court verdict, Minister of women and child development, Maneka Gandhi said that they were preparing a new law which will allow 16-year-olds to be tried as adult. She said that 50% of the juvenile crimes were committed by teens who know that they will get away with it. She added that changing the law, which will allow them to be tried for murder and rape as adults will scare them.

#### **CONCLUSION**

The heinous crimes such as rape, murder etc are crimes which totally destroy the moral of the victim’s family and if it is a rape then it is a lifelong stigma for the girl and her family members. Many offenders of these crimes walk free after serving a minimal period of sentence after being proven juvenile as per the so called records. Thousands of cases go unreported in our country just because of the stigma attached and most of the time victims are shunned from the society and are left unmarried just because that she was not physically strong enough in order to fight for her freedom from the clutches of the person or persons. The juvenile who commits crime of this gravity should not be left to walk free after serving maximum of 3 years that too in special home. It is high time that the law should be amended on the same footing of countries like U.S, U.K etc where a juvenile is also tried in a criminal court depending on the gravity of the offence committed by the minor.

There was the necessity of some reforms in the Juvenile laws as there was a steep rise in serious crimes involving youth of 16 – 18 years of age and they very well knew that below 18 years is the ‘getaway pass’ for them from the criminal prosecution. The punishment should be a bit deterrent in order to inject the feeling of fear in the mind of the criminal. The recent rape case of “**Nirbhaya**” has caused utter dismay, concern and outrage amongst the people. The gruesome act of brutalizing her with an iron rod was done none other but by a juvenile and he has been sentenced for a period of 3 years as per

Section 15 of Juvenile Justice Act, 2000 as per our law for juveniles. The principal ought to have been followed for trying juvenile offenders is that Juvenility should be decided as per the state of mind and not just the state of body. The new law i.e. Juvenile Justice (Care and Protection for Children) Act, 2015 is intended to be “deterrent” to ensure juveniles refrains from crime and avoid spoiling their lives. There is the need for the new law as National Crime Records Bureau data shows around 28,000 juveniles had committed various crimes in 2013 and of them, 3,887 had allegedly committed heinous crimes.

#### References :

1. Crime In India 2013, National Crime Records Bureau, Ministry of Home Affairs, New Delhi
2. Saumyata Panwar , Juvenile Delinquency Laws in India and Emerging Issues. Retrieved from <http://lex-warrior.in/2014/08/juvenile-delinquency-laws-in-india-emerging-issues>
3. Simonsen ,C.E. and M.S Gordon Juvenile Justice In America. Encino, California: Glenco Publishing C.1979
4. Juvenile Delinquency: Overview, Prevention And Laws In India;Vol.3|Issue 02|Pg:1899-1903
5. The Hindu Magazine , Weekly Edition, Dated 2-11-2014
6. Dr.N.V.Paranjape, Criminology and Penology, Central Law Publication ,Allahabad 2012 p. 570
7. Sarah Alice Brown, Trends in Juvenile Justice state legislations 2001-2011, Retrieved from [www.nesl.org](http://www.nesl.org)
8. Krohn Marvin & Lane Jodi (2015) “The Handbook of Juvenile Delinquency and Juvenile Justice”